

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THERESA HANKERSON,

Plaintiff,

-against-

125 WORTH ST DEPARTMENT OF HEALTH  
VITAL RECORDS NEW YORK 10013

Defendant.

24-CV-1148 (LTS)

ORDER OF DISMISSAL  
WITH LEAVE TO REPLEAD

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is proceeding *pro se*, brings this action against a supervisor at the New York City Department of Health (“DOH”) regarding Plaintiff’s attempts to obtain her birth certificate. By order dated April 3, 2024, the Court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees. For the following reasons, the Court dismisses the complaint, with 30 days’ leave to replead.

**STANDARD OF REVIEW**

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See Fed. R. Civ. P. 12(h)(3).*

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in

original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Taking all of these standards together, courts liberally construe pleadings prepared by *pro se* litigants and hold them “to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citation omitted).

## **BACKGROUND**

The following facts are drawn from the complaint. In September, October, and November of 2023, Plaintiff requested a death certificate for her birth parents at DOH’s vital records department on Worth Street in New York County. Plaintiff then requested “the original birth certificate,” but a supervisor informed Plaintiff that “since my sister raise me she will be on my adopted birth.”<sup>1</sup> (ECF 1, at 9.) The caption of the complaint lists DOH as the defendant, but throughout the complaint, Plaintiff refers to a supervisor at DOH as the defendant.

Plaintiff does not provide any additional information in her complaint, or complete the injury and relief sections of the complaint form.

## **DISCUSSION**

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In

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<sup>1</sup> The Court quotes from the complaint verbatim. All spelling, grammar, and punctuation are as in the original unless noted otherwise.

reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

Moreover, a complaint is subject to dismissal if its “form or substance prevents the defendant from forming a ‘fair understanding’ of the plaintiff’s allegations or otherwise prejudices the defendant in responding to the complaint.” *Ong v. Park Manor (Middletown Park) Rehab. & Healthcare Ctr.*, 51 F. Supp. 3d 319, 345 (S.D.N.Y. 2014). Ultimately, a complaint must give “fair notice” to the defendants. *See Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995) (“The function of pleadings under the Federal Rules is to give fair notice of the claims asserted.” (internal quotation marks omitted)).

Plaintiff’s complaint does not comply with Rule 8 because Plaintiff does not make a short and plain statement showing that she is entitled to relief from Defendant, by placing the supervisor of DOH on notice of the claims asserted against him or her. Accordingly, the Court finds that “the complaint’s form [and] substance prevent[] the defendant from forming a ‘fair understanding’ of the plaintiff’s allegations.” *Ong*, 51 F. Supp. 3d at 345. Moreover, inasmuch as Plaintiff is asserting that a municipal employee violated her rights when providing her information regarding her birth certificate, these facts do not suggest a violation of any federal or

constitutional right.<sup>2</sup> The Court therefore dismisses the complaint for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

#### **LEAVE TO AMEND**

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the Second Circuit has cautioned that district courts “should not dismiss [a *pro se* complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)). Because Plaintiff may be able to allege additional facts to state a claim regarding her attempts to obtain her records, the Court grants Plaintiff 30 days’ leave to amend her complaint to detail her claims.

If Plaintiff does not file an amended complaint within the time allowed, the Court will direct the Clerk of Court to enter judgment in this action.

#### **CONCLUSION**

Plaintiff’s complaint, filed IFP under 28 U.S.C. § 1915(a)(1), is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), with 30 days’ leave to replead.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf.*

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<sup>2</sup> Plaintiff may obtain a copy of her birth certificate online by visiting DOH’s website. *See* <https://perma.cc/L45Y-H6E9>.

*Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Court directs the Clerk of Court to hold this matter open on the docket until a civil judgment is entered.

SO ORDERED.

Dated: April 29, 2024  
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN  
Chief United States District Judge